

EXHIBIT A

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF FLORIDA
3 JACKSONVILLE DIVISION
4 CASE NO. 3:04-CV-146-99HTS
5

6 - - -

7 SEA STAR LINE, LLC, :
a limited liability company, :
8 Plaintiff, :
V. :
9 EMERALD EQUIPMENT LEASING, INC., :
a corporation, :
10 Defendant. :

11

12

13 December 8, 2004
14 - - -

14

15 Oral deposition of ARTHUR
16 B. DAVIS, held in the offices of Adelman
Lavine Gold and Levin, Four Penn Center,
17 Philadelphia, Pennsylvania, 19103, commencing
at 10:00 a.m., on the above date, before
18 Joseph Calavetta, a Federally-Approved
Registered Professional Reporter and
Commissioner for the Commonwealth of
19 Pennsylvania.
20 - - -

20

21

22 ESQUIRE DEPOSITION SERVICES
Fifteenth Floor
23 1880 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103
24 (215) 988-9191

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Arthur B. Davis 19

1 Let me rephrase that.

2 What was Tom Holt, Sr.'s

3 position?

4 A. In what?

5 MR. MOLDOFF: Just

6 objection to the question being

7 overbroad.

8 Q. In what capacity would you

9 report to Tom Holt, Sr?

10 A. Well --

11 MR. MOLDOFF: I

12 object. There is no time frame,

13 maybe that will help.

14 A. I am just confused about

15 your question.

16 Q. As president of Emerald

17 Equipment Leasing, why would you report

18 to Tom Holt, Sr?

19 A. Tom Holt, Sr was the owner

20 of NPR, Incorporated.

21 Q. Was he also the owner of

22 Emerald Equipment Leasing?

23 A. No.

24 Q. Was Emerald Equipment

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Arthur B. Davis 45

1 MR. MOLDOFF: The
2 lawsuit you are talking about is
3 the lawsuit instituted in March of
4 2004 by Sea Star Line?

5 BY MR. ARMSTRONG:

6 Q. Prior to March of 2004, do
7 you recall looking at paragraph 13 on
8 page 8 of the order?

9 A. I am sure that I read the
10 order prior to March of 2004.

11 Q. You don't recall how long
12 prior to March of 2004 you read the
13 order?

14 A. That is correct.

15 Q. And what was your purpose
16 in reading the order prior to March of
17 2004?

18 A. Because this was an order
19 that was handed down by the Bankruptcy
20 Court.

21 Q. When you read the order,
22 were you aware that Emerald Equipment
23 Leasing would be - Emerald equipment
24 would be stored on property and leased by

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Arthur B. Davis 46

1 Sea Star Line as a result of the asset
2 sale?

3 A. Yes.

4 Q. When did you become aware
5 that equipment would be stored on Sea
6 Star Line property as a result of the
7 asset sale?

8 A. Whenever it was that I read
9 this order.

10 Q. Did you ever inventory
11 equipment stored on Sea Star Line
12 property as a result of the asset sale?

13 MR. MOLDOFF: I just
14 object to the question, the form of
15 the question, to the extent that
16 I don't know whether whether you
17 mean Art Davis or anyone on behalf
18 of Emerald.

19 MR. ARMSTRONG: I am
20 asking you.

21 THE WITNESS: Would
22 you then repeat your question.

23 MR. ARMSTRONG: Read
24 it back.

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Arthur B. Davis 76

1 board the three vessels as of, I think it
2 was two o'clock or three o'clock in the
3 morning on April 27th.

4 Q. And were you aware that
5 payments for shipments in process would
6 be made to NPR?

7 A. I became aware of that.

8 Q. When did you become aware
9 of that?

10 A. I really don't know the
11 exact time. Most recently during this
12 litigation.

13 Q. Did you ever identify
14 equipment involved in shipments in
15 process?

16 A. That was an impossible task
17 for me to do.

18 Q. Why was that?

19 A. Because although we asked
20 that Sea Star provide manifests many
21 times, they refused to do so.

22 Q. Well, now, the equipment
23 that was on board the vessels as of three
24 o'clock a.m. on April 27th of 2002, was

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1 Arthur B. Davis 86
report -- off that ship, I'm sorry, and
2 be able to compare what he discharged
3 back to the manifests, that's why the
4 manifest is so important.

5 Q. The discharging stevedore
6 doesn't prepare a manifest, does he?

7 A. He does not, but he uses
8 the manifests to confirm that he took
9 off.

10 Q. Let me show you a copy of a
11 letter dated June 10 of 2002 which I will
12 ask the court reporter to mark as exhibit
13 10 for identification.

14 - - -

15 (Whereupon, Exhibit
16 Number 10 was marked for
17 identification.)

18 - - -

19 BY MR. ARMSTRONG:

20 Q. Do you recognize that
21 document?

22 A. Yes, I do.

23 Q. When did Tom Holt, Sr
24 become president of Emerald Equipment

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Arthur B. Davis 87
Leasing?

1
2 A. I think March or April of
3 2001.

4 Q. Is Tom Holt, Sr still
5 president of Emerald Equipment Leasing?

6 A. Yes.

7 Q. Did he succeed you as
8 president?

9 A. Yes.

10 Q. When did you become aware
11 that payments due for equipment not used
12 in shipments in process or not for a
13 purpose other than completing shipments
14 in process on April 27th, would be made
15 to MBC Leasing, Incorporated?

16 A. I am not sure exactly.

17 Q. Did you ever have any
18 discussions with Tom Holt, Sr regarding
19 the contents of this letter?

20 A. No.

21 Q. Did you ever have any
22 discussions with Tom Holt, Sr regarding
23 payments for shipments in progress to
24 NPR, Incorporated?

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1 Arthur B. Davis 89
2 aware of the payments by Sea Star for
3 shipments in process or progress or
4 transit as of April 27th of 2002 would be
5 made to NPR, Incorporated?

6 A. Probably when I met with
7 Andy Rooks last August of 2003 at
8 Jacksonville.

9 Q. When you heard that, did
10 you go back and discuss it with Tom Holt,
11 Sr?

12 A. No.

13 Q. Did you discuss it with
14 anyone?

15 A. I believe I had some
16 discussion with Scott Criegeer in that
17 regard.

18 Q. What did you say to Scott
19 Criegeer?

20 A. I asked him for his
21 understanding of what was happening
22 there.

23 Q. What did he tell you?

24 A. He had sent a letter or had
25 Bill Hallam send a letter, I am not

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Arthur B. Davis 91

1 Q. Do you recall?

2 A. I think I did.

3 Q. When did you first see a
4 copy of the agreement?

5 A. It was certainly after the
6 August meeting with Sea Star.

7 Q. Other than for shipments in
8 process, to what entity was Sea Star to
9 make payments for equipment, for Emerald
10 equipment after April 27th of 2002?

11 A. They were paying the funds
12 to MBC Leasing, Incorporated.

13 Q. How long was Sea Star to
14 pay the funds to MBC Leasing,
15 Incorporated?

16 A. I don't understand your
17 question.

18 Q. Why was Sea Star to pay the
19 funds to MBC Leasing, Incorporated rather
20 than Emerald?

21 MR. MOLDOFF: If you
22 know.

23 Q. If you know?

24 A. My understanding is that

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Arthur B. Davis 92
1 MBC Leasing, Incorporated held a lien,
2 they were the secured creditor on the
3 equipment, and my recollection is that
4 there was a lifting of the stay and that
5 MBC Leasing, Incorporated was allowed to
6 receive the money to reduce the amount of
7 the loan.

8 Q. Let me show you a copy of a
9 document dated April 19th of 2002, which
10 I will ask the court reporter to mark as
11 exhibit 11 for identification.

12 - - -

13 (Whereupon, Exhibit
14 Number 11 was marked for
15 identification.)

16 - - -

17 BY MR. ARMSTRONG:

18 Q. Have you ever seen that
19 document?

20 A. Yes, I believe I have seen
21 this.

22 Q. Do you recall when you
23 first saw it?

24 A. As part of the production

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1 document.

2 Q. Do you recognize the
3 signatures on, I believe it would be
4 page -- the last page of the document --
5 of the actual text of the contract?

6 A. I believe I do.

7 Q. Whose signatures do you
8 recognize?

9 A. Philip Bates and Thomas J.
10 Holt.

11 Q. Is that Thomas J. Holt, Sr?

12 A. It would be, yes.

13 Q. At the time was Thomas J.
14 Holt, Sr., President of Emerald Equipment
15 Leasing?

16 A. Yes.

17 Q. Prior to Mr. Holt signing
18 had the document, did you have any
19 discussions with him concerning its
20 contents?

21 A. Yes.

22 Q. And what were those
23 discussions?

24 A. Basically went over the

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Arthur B. Davis

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1 agreement.

2 Q. So Mr. Holt read the
3 agreement before he signed it?

4 A. I believe so.

5 Q. Did you have any
6 communications with Scott Criegee
7 concerning this document?

8 A. Yes.

9 Q. What communications did you
10 have with Scott Criegee concerning the
11 equipment rental agreement?

12 A. I provided the agreement.

13 Q. After you provided the
14 agreement, did Scott Criegee ask you any
15 questions about it?

16 A. I don't recall.

17 Q. Did he give you any
18 instructions regarding the agreement?

19 A. Only to the extent that he
20 didn't see a problem with it.

21 Q. Do you recall anything
22 else?

23 A. No.

24 Q. Did you have any

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 106
2 communications with Mr. Hallam regarding
3 the equipment rental agreement?

4 A. Yes.

5 Q. What communications did you
6 have with him?

7 A. This was an evolving
8 process, so whatever drafts came up,
9 copies were provided to Mr. Hallam.

10 Q. Was Mr. Hallam telling you
11 what should be in the agreement?

12 A. Yes, the same as yourself.

13 Q. Did Mr. Hallam tell you
14 that signing the agreement would require
15 the authorization of MBC Leasing,
16 Incorporated?

17 A. Yes.

18 Q. Did you receive the
19 authorization of MBC Leasing,
20 Incorporated to sign the agreement?

21 A. Yes.

22 Q. Did you understand why the
23 authorization of MBC Leasing,
24 Incorporated was necessary to sign the
 agreement?

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1 A. Yes.

2 Q. What was your

3 understanding?

4 A. MBC Leasing had a secured
5 lien on the equipment.

6 Q. MBC Leasing, Incorporated
7 in actuality controlled the equipment, is
8 that correct?

9 A. I don't understand the term
10 controlled.

11 Q. You could not do anything
12 with respect to Emerald equipment without
13 MBC Leasing's permission, is that
14 correct?

15 MR. MOLDOFF: If you
16 know. To the extent it calls for a
17 legal conclusion I object.

18 A. I don't know.

19 Q. You are familiar with the
20 equipment rental agreement; is that
21 right?

22 A. I am.

23 Q. Paragraph 1, under
24 paragraph 1 effecting delivery would be

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 108

1 by signed and dated equipment interchange

2 receipts; is that correct?

3 A. That's correct.

4 Q. What's an equipment

5 interchange receipt?

6 A. It is a document that the
7 parties execute to show that a piece of
8 equipment was delivered or seized.

9 Q. Is that sometimes
10 abbreviated as EIR?

11 A. I have never heard that.

12 Q. And, now, is there another
13 type of interchange receipt called a
14 trailer interchange receipt?

15 A. Yes.

16 Q. What is a trailer
17 interchange receipt?

18 A. It would be the same
19 explanation.

20 Q. Are equipment interchange
21 receipts and trailer interchange receipts
22 forms used to interchange equipment?

23 A. Say that again please.

24 Q. Are equipment interchange

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Arthur B. Davis

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1 A. I think it was

2 approximately three weeks.

3 Q. Now, subparagraph b of

4 paragraph 10, says in part upon

5 re-deliver of particular equipment the

6 receiving terminal will execute an

7 equipment interchange receipt. Do you

8 see that?

9 A. I do.

10 Q. In Philadelphia the

11 receiving terminal was Greenwich

12 Terminals; is that correct?

13 A. Yes.

14 Q. In JAX PORT after

15 approximately August 1st, the receiving

16 terminal was Greenwich Terminals; is that

17 correct?

18 A. That's correct.

19 Q. In San Juan the receiving

20 terminal was the Sea Star terminal; is

21 that correct?

22 A. Yes.

23 Q. Your understanding of the

24 language equipment interchange receipt in

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 115

1 that subparagraph would be a TIR; is that

2 correct?

3 A. Yes.

4 Q. So when equipment was

5 re-delivered the terminal that took it in

6 would sign a TIR; is that right?

7 A. It would. The TIR would be

8 issued at the time that something was

9 happening with that specific piece of

10 equipment.

11 Q. Would the TIR be issued at

12 the time that the equipment came through

13 the receiving terminal's gate?

14 A. That's when it is supposed

15 to happen. That is right.

16 Q. And that would be in terms

17 of a piece of equipment coming into the

18 terminal, a gate-in procedure?

19 A. Gate-in, yes.

20 Q. And with respect to

21 equipment going out of the terminal, it

22 would be a gate-out procedure; is that

23 correct?

24 A. That is correct.

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1 MR. ARMSTRONG: Do you

2 want a break for lunch?

3

4

5 ---

6 (Whereupon, a luncheon

7 recess wastaken.)

8 ---

9

10

11 BY MR. ARMSTRONG:

12 Q. Is gate-in abbreviated as

13 G.I.

14 A. Yes.

15 Q. Is gate-out abbreviated as

16 G.O.?

17 A. I would take it for that,

18 yes.

19 Q. In this equipment agreement

20 paragraph 15 a, states in part, this

21 agreement contains the entire agreement

22 between the parties and subject to the

23 provisions of section 1, may not be

24 amended altered or modified except by

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis

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1 by alterations.

2 Q. The language in the
3 agreement states and I will repeat it
4 this agreement contains the entire
5 agreement between the parties and subject
6 to the provisions of section 1 may not be
7 amended, altered or modified except by a
8 writing signed by the party to be bound.

9 In the context of that
10 language, are you aware of any ways in
11 which the equipment rental agreement was
12 altered on or after July 31st of 2002?

13 A. No.

14 Q. Now, moving forward to the
15 independent contractor agreement which I
16 asked the court reporter to mark as
17 exhibit 17 for identification, do you
18 recognize that document?

19 A. Yes, I have seen this.

20 Q. When did you first see that
21 document?

22 A. I am really not sure as to
23 the date.

24 Q. Did you participate in

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 123
negotiating the independent contractor

2 agreement?

3 A. To some extent, yes.

4 Q. What was your

5 participation?

6 A. Talked about minimum
7 pricing on equipment and what we would be
8 able -- what would be able to be done on
9 behalf of MBC Leasing.

10 Q. Look at the arrangement
11 page, section 21, notices to the
12 contractor?

13 A. All right.

14 Q. There's some handwriting
15 under Greenwich Terminals LLC. Can you
16 read that?

17 A. Yes.

18 Q. Is that Thomas J. Holt, Jr?

19 A. It is.

20 Q. President 3301 South
21 Columbus Boulevard Philadelphia,
22 Pennsylvania?

23 A. Yes.

24 Q. Do you recognize the

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 124
handwriting?

2 A. I do.

3 Q. Whose handwriting is it?

4 A. Tom Holt, Jr.

5 Q. Was Tom Holt, Jr president
6 of Greenwich Terminals when this contract
7 was signed.

8 MR. MOLDOFF: We will
9 object.

10 A. I'm sorry.

11 MR. MOLDOFF: I object
12 to that question.

13 Q. All right. You can go
14 ahead and answer.

15 MR. MOLDOFF: I object.
16 to the extent it's calls for
17 speculation.

18 A. I don't know.

19 Q. Look at exhibit D,
20 contractors representatives, do you know
21 who prepared that list?

22 A. I believe it was MBC
23 Leasing.

24 Q. Thomas Holt, Jr., Arthur

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Arthur B. Davis 125

1 Davis, Arthur Davis would be you; is that

2 correct?

3 A. That's correct.

4 Q. So you were a

5 representative of Greenwich Terminals

6 under this contract?

7 A. That is right.

8 Q. And the third name is

9 Martin McDonald, who is that?

10 A. Martin McDonald was an

11 employee of NPR, Incorporated.

12 Q. All right.

13 Was he an employee of NPR,

14 Incorporated on or about June 30th of

15 2002?

16 A. No.

17 Q. Do you know who his

18 employer was on or about June 30th of

19 2002?

20 A. No.

21 Q. Did he have any

22 relationship with Emerald on or about

23 June 30th of 2002?

24 MR. MOLDOFF: If you

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Arthur B. Davis 157

1 Q. Let me show you a copy of
2 some e-mails dated August 8 and August
3 11th of 2003 which I will ask the court
4 reporter to mark as exhibit 28 for
5 identification.

6 - - -

7 (Whereupon, Exhibit
8 Number 28 was marked for
9 identification.)

10 - - -

11 BY MR. ARMSTRONG:

12 Q. Do you recognize those
13 documents?

14 A. I remember this.

15 Q. The top of the second page
16 Scott Criegeer states quote Art, after I
17 got over the shock of seven months of
18 your salary all at once unquote. Do you
19 see that?

20 A. I do.

21 Q. You were submitting bills
22 for your salary to Mr. Criegeer?

23 A. I was.

24 Q. And MBC Leasing was paying

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis

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1 those bills?

2 A. They were.

3 Q. MBC Leasing was paying your
4 salary?

5 A. They were paying it to
6 Greenwich Terminals.

7 Q. Were they paying anyone
8 else's salary?

9 A. They were paying for Marty
10 McDonald.

11 Q. And you would submit
12 separate bills for Marty McDonald's
13 salary?

14 A. That is correct.

15 Q. Were they paying anyone
16 else's salary?

17 A. Francisco Gonzalez.

18 Q. Who is that?

19 A. He's a gentleman in Puerto
20 Rico that was being used to help sell the
21 equipment.

22 Q. And who was using him?

23 A. We were.

24 Q. By me are you --

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Arthur B. Davis 159

1 A. Greenwich.

2 Q. Was MBC Leasing,

3 Incorporated paying Tom Holt, Jr's

4 salary?

5 A. No.

6 Q. Let me show you a copy of a

7 letter or telefax, telecopy cover sheet

8 dated April 24th of 2003 which I will ask

9 the court reporter to mark as exhibit 29

10 for identification.

11 - - -

12 (Whereupon, Exhibit

13 Number 29 was marked for

14 identification.)

15 - - -

16 BY MR. ARMSTRONG:

17 Q. Do you recognize that

18 document?

19 A. Yes, I do.

20 Q. The upper corner, left-hand

21 corner there is a note Tom, Sr for your

22 information, is that Arthur underneath?

23 A. Yes.

24 Q. Did you write that?

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Arthur B. Davis 175

1 know what units were on board the ships.

2 So is it possible that a

3 unit was billed, yes. It is possible

4 that a unit was billed for which Sea Star

5 paid into NPR, Incorporated and if they

6 had the manifests as were promised then

7 we would be able to adjust the bill

8 accordingly.

9 Q. Did you, after receiving
10 that telefax, contact Scott Criegee and
11 say I can't make sure?

12 A. I am sure I did.

13 Q. Do you recall specifically
14 telling him that?

15 A. I think so.

16 Q. When did you do that?

17 A. Whenever -- in close
18 proximity to receipt.

19 Q. Did you call him on the
20 phone?

21 MR. MOLDOFF: Just to
22 clear up some confusion, I don't
23 think Art understood the question.

24 MR. ARMSTRONG: I'm
ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 198

1 late April of 2002; is that correct?

2 A. They had equipment in San

3 Juan.

4 Q. You knew that Sea Star was

5 inventorying equipment at various

6 terminals including that in San Juan

7 beginning in late April of 2002, is that

8 correct?

9 MR. MOLDOFF: Object

10 to the form of the question.

11 THE WITNESS: They had

12 equipment in San Juan, yes, they

13 did have equipment there.

14 Q. Were they inventorying

15 equipment that was located there in the

16 Puerto Nuevo terminal in San Juan?

17 MR. MOLDOFF: Was Sea

18 Star?

19 Q. Wait a minute.

20 MR. MOLDOFF: Hold

21 it. I object. I object. You are

22 being argumentative and I object.

23 Q. You know, do you not, that

24 as of April 27th of 2002 there was

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 199

1 Emerald equipment that had been on lease
2 to NPR, Incorporated located in the
3 terminal at Puerto Nuevo in San Juan; is
4 that correct?

5 A. That is correct.

6 Q. You know that one of the
7 things that Sea Star was doing was to
8 then inventory that equipment, is that
9 correct?

10 MR. MOLDOFF: Object
11 to the form of the question. Do
12 you know?

13 A. On April 27th.

14 Q. On and after April 27th?

15 A. I can't speak to on April
16 27th.

17 Q. Can you speak to any date
18 after April 27th?

19 A. Certainly.

20 Q. What date can you first
21 speak to?

22 A. The 22nd of June of 2002.

23 Q. So as far as you know the
24 first time that Sea Star began to

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Arthur B. Davis 219

1 A. Sea Star had already been
2 using all of the equipment that they had
3 in-house on hand since the beginning of
4 May, so by the time we got to this other
5 written agreement, which was to be
6 effective as of 4 / 29 five and a half
7 months had already passed. It didn't
8 make any difference. They had and used
9 what they had and what they used.

10 Q. And how did you tell from
11 the DV schedule that equipment you have
12 listed was not being paid by NPR as of
13 April 26th of 2002, but was missing or
14 POS as of that date?

15 A. Because there had to be
16 some basis upon which to start to bill it
17 in the first place.

18 Q. That's fine.

19 Now, tell me what the basis
20 for starting to bill equipment listed on
21 the DV schedule was when you prepared
22 those schedule?

23 A. It's those same basis as
24 the actual billing that we did. We took

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Arthur B. Davis

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1 operations?

2 A. Teddy Hineson, I went to
3 the DV with Marty McDonald and met with
4 Teddy Hineson who said I think that I am
5 entitled to the NPR, Incorporated
6 equipment.

7 We said you are not
8 entitled to the NPR -- I mean Emerald
9 equipment because NPR, Incorporated did
10 not pay you and, in fact, much of that
11 equipment was, in fact recovered and paid
12 for and credit was given to Sea Star if
13 Sea Star had used it.

14 Q. You knew that there were
15 other vendors unquote that were holding
16 Emerald equipment in the Dominican
17 Republic, did you not?

18 A. That is the only one that
19 comes to mind. When we did an invoice to
20 Sea Star, if Sea Star Line used the piece
21 of equipment and didn't return the piece
22 of equipment Sea Star had to pay for the
23 piece of equipment.

24 Q. You invoiced Sea Star for

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